IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 15192 of 2007(S)

OPHMA.114/2000 of FAMILY COURT, THIRUVALLA
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PETITIONER:

VIJAYAMMA,
ALANCHERIL HOUSE, MELUKARA MURI,
KOZHENCHERRY VILLAGE.

BY ADV. SRI.LIJU.V.STEPHEN

RESPONDENTS:
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1. SADASIVAN PILLAI,
PADINJARE ALANCHERIL HOUSE,
MELUKARA MURI, KOZHENCHERRY VILLAGE.

2. SANTHAKUMARI AMMA @ SANTHA S.PILLAI,
MANIVILETHU HOUSE,
MALLAPUZHACHERRY MURI.

BY ADV. SRI.JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007, ALONG WITH W.P.(C)No. 17906/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE JUDGMENT IN W.P.(C)No. 32639/06 OF THIS HON'BLE COURT DATED 2.3.2007.

EXT. P2: COPY OF THE RESTORATION PETITION, EA NO.35/07 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THIRUVALLA.

EXT. P3: COPY OF THE DELAY CONDONATION PETITION, EA NO. 36/07 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THIRUVALLA.

EXT. P4: COPY OF THE STAY PETITION, EA. NO.37/07 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THIRUVALLA.

EXT. P5: COPY OF THE MEDICAL CERTIFICATE DATED 26.3.07 ISSUED BY DR.S.J.SUGATHA TO THE PETITIONER.

EXT. P6: COPY OF THE ORDER IN E.P. NO.15/03 IN O.P.No.(HMA)114/2000 DATED 27.3.2007 OF THE FAMILY COURT, THIRUVALLA.

EXT. P7: COPY OF THE ORDER IN EA NO.36/07 IN E.P. NO.15/03 IN O.P.No. (HMA)114/2000 DATED 27.3.2007 OF THE FAMILY COURT, THIRUVALLA.

EXT. P8: COPY OF THE ORDER IN EA NO.37/07 IN E.P. NO.15/03 IN O.P.No. (HMA)114/2000 DATED 27.3.2007 OF THE FAMILY COURT, THIRUVALLA.

/TRUE COPY/

P.A. TO JUDGE

JP

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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W.P.(C).NOs.15192 & 17906 of 2007

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Dated this the 18th day of July, 2007

JUDGMENT

T.R.Ramachandran Nair, J.

The parties in both the writ petitions are the same and hence they are being disposed of by a common judgment.

2. In Writ Petition No.15192/2007 the relief sought for is to set aside the orders in E.A.Nos.35, 36 and 37 of 2007 in O.P.(HMA) No.114/2000 of the Family Court, Thiruvalla. The petitioner has sought for a further direction to consider Exts.P2 to P4 in accordance with law. The case of the petitioner is that she is the absolute owner of 10 cents of property including the residential house and movables therein where she is residing with her family. The first and second respondents are husband and wife and among them, proceedings have been pending adjudication before the Family Court, Thiruvalla. In order to realise an amount of Rs.22,200/-, the second respondent caused attachment of the movable properties of the petitioner from her residential house. The first respondent is the brother of the petitioner's deceased husband. Claiming her right over the properties attached, she filed an application under Order XXI Rule 58 C.P.C. before

the Family Court. The same was dismissed for default which prompted her to file a civil suit as O.S. No.402/2005 before the Munsiff's Court, Pathanamthitta. Even though an ex-parte order of injunction was initially granted, that was subsequently vacated and appeal filed from the said order has also been dismissed. This was upheld as per Ext.P1 judgment by this court in Writ Petition No.32639/2006. Thereafter, she filed an application for restoration of the application filed under Order XXI Rule 58 C.P.C. before the Family Court. Along with it petition for condonation of delay and a stay petition were also filed. Again that were dismissed for default as per Exts.P6 to P8. She prays for setting aside the above orders passed by the Family Court for allowing her an opportunity to establish her claim.

3. Writ Petition No.17906/2007 is filed for a direction to the Family Court to consider E.A. No.100/2007 in E.P.No.15/2003 in O.P.(HMA) No.114/2000. The above E.A. is filed under Section 60 read with Section 151 C.P.C. Further she filed a petition to advance the hearing of the said petition which was dismissed by the Family Court.

4. Having heard learned counsel for the parties, we find that to have a quietus to the issue arising between the parties, it will be appropriate that the orders Exts.P6 to P8 produced in Writ Petition No.15192/2007 are

quashed for allowing the petitioner to prosecute E.A. Nos.35, 36 and 37 of 2007. Accordingly Exts.P6 to P8 are hereby quashed and the Family Court, Thiruvalla is directed to consider and pass orders on Exts.P2 to P4 in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

Writ Petition No.17906/2007 is also disposed of directing the Family Court to consider and pass orders on Ext.P1 on its merits, after hearing the parties. Till then, the interim order passed by this court on 13.6.2007 will continue in force.

The writ petitions are disposed of accordingly. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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